

AMENDED IN SENATE MARCH 26, 2007

SENATE BILL

No. 459

Introduced by Senator Florez

February 21, 2007

An act to add Chapter 5.5 (commencing with Section 9069.10) to Part 4 of Division 8 of the Health and Safety Code, relating to public cemetery districts.

LEGISLATIVE COUNSEL'S DIGEST

SB 459, as amended, Florez. Public cemetery districts: use and control of interment rights.

Existing law contains provisions relating to the establishment of public cemetery districts, including the formation of a district, the selection of a district governing board, and the powers and duties of the board. Existing law authorizes a public cemetery district to sell interment rights to specified individuals.

Existing statutory law provides, with respect to private cemeteries, for the succession, as prescribed, of the use and control of interment rights if other directions have not been given by the decedent. Under the existing common law doctrine applicable to public cemetery districts, interment rights are subject to the laws of intestacy if other directions have not been given by the decedent.

This bill would, instead, provide that if the owner of interment rights purchased from a public cemetery district dies without designating a successive owner, these rights shall be transferred to an appointed person or persons, in a prescribed order of succession.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 5.5 (commencing with Section 9069.10) is added to Part 4 of Division 8 of the Health and Safety Code, to read:

CHAPTER 5.5. INTERMENT RIGHTS

9069.10. The Legislature finds and declares all of the following:

(a) The Legislature authorizes public cemetery districts to sell interment rights in its cemeteries, columbariums, and mausoleums, subject to the limitations of this part.

(b) Interment rights, a form of property, shall not be subject to the laws of intestacy; instead, the right to use or control the rights of interment purchased from a public cemetery district shall be governed by this chapter.

(c) In enacting this chapter, it is the intent of the Legislature that it shall be construed to complement Chapter 3 (commencing with Section 7100) of Part 1 of Division 7, which governs the right to control the disposition of remains, by establishing the succession of interment rights that are purchased from public cemetery districts.

(d) This chapter shall establish who has the right to use or control the use of interment rights purchased from a public cemetery district.

9069.12. (a) As used in this chapter, “interment rights” or “rights” means the right to use or control the use of a plot, niche, or other space for the interment of human remains.

(b) The right of use or control of a plot shall include both of the following:

(1) The right to make multiple interments in a single plot, in conformance with Section 8113.5 and all applicable regulations of the district.

(2) The right to control the placement and removal of memorial markers in conformance with all applicable regulations of the district.

(3) The right of use or control of a plot shall not include the right to remove from a plot, niche, or space any remains that were previously, and properly, interred in the plot, niche, or space.

1 (c) “Owner” means the person who holds interment rights in
2 connection with a plot, niche, or other space for the interment of
3 human remains.

4 9069.14. Interment rights are presumed to be the sole property
5 of the purchaser, subject to any written declaration to the contrary
6 that is signed by the purchaser and deposited with the district. The
7 purchaser may designate, in a signed writing deposited with the
8 district, any other person qualified by this part as owner of these
9 rights.

10 9069.16. If the owner of interment rights dies without
11 designating a successive owner, the rights shall transfer as follows,
12 in the following order of priority:

13 (a) To the spouse of the owner, if any, at the time of the owner’s
14 death.

15 (b) To the sole surviving competent adult child of the owner,
16 or if there is more than one competent adult child of the owner,
17 the majority of the surviving competent adult children. However,
18 less than the majority of the surviving competent adult children
19 shall be vested with the rights and duties of this section if they
20 have used reasonable efforts to notify all other surviving competent
21 adult children of their instructions and are not aware of any
22 opposition to those instructions by the majority of all surviving
23 competent adult children.

24 (c) To the surviving competent parent or parents of the owner.
25 If one surviving competent parent is absent, the remaining
26 competent parent shall be vested with the rights and duties of this
27 section after reasonable efforts have been unsuccessful in locating
28 the absent surviving competent parent.

29 (d) To the sole surviving competent adult sibling of the owner,
30 or if there is more than one surviving competent adult sibling, then
31 to the majority of the surviving competent adult siblings. However,
32 less than the majority of competent adult siblings of the owner
33 shall be vested with the rights and duties of this section if they
34 have used reasonable efforts to notify all other surviving competent
35 adult siblings of their instructions and are not aware of any
36 opposition to those instructions by the majority of all surviving
37 competent adult siblings.

38 (e) To the surviving competent adult person or persons
39 respectively in the next degrees of kinship to the owner, or if there
40 is more than one surviving competent adult person of the same

1 degree of kinship, the majority of those persons. However, less
2 than the majority of surviving competent adult persons of the same
3 degree of kinship shall be vested with the rights and duties of this
4 section if those persons have used reasonable efforts to notify all
5 other surviving adult persons of the same degree of kinship of their
6 instructions and are not aware of any opposition to those
7 instructions by the majority of all surviving competent adult
8 persons of the same degree of kinship.

9 (f) For the purpose of this section, the following terms have the
10 following meanings:

11 (1) “Adult” means an individual who has attained 18 years of
12 age.

13 (2) “Child” means a natural or adopted child of the owner.

14 (3) “Competent” means an individual who has ~~never~~ *not* been
15 declared incompetent by a court of law, ~~regardless of whether that~~
16 ~~individual has received any subsequent declarations of competency~~
17 *or who has been declared competent by a court of law following*
18 *a declaration of incompetence.*

19 9069.18. (a) A district may permit the use of the unoccupied
20 portion or portions of a decedent owner’s plot, provided a person
21 or persons, who purport an entitlement to the use of those
22 unoccupied portion or portions, provides an affidavit stating their
23 personal knowledge of the facts setting forth the fact of the death
24 of the owner, and the name of the person or persons entitled to the
25 use of the plot pursuant to this chapter.

26 (b) A district shall not be liable for any action in connection
27 with the acceptance of an affidavit under this section unless the
28 district has actual knowledge and notice of false representations
29 included therein.

30 9069.20. At the time of purchase, the district shall notify the
31 purchaser of interment rights, in writing, of the law governing the
32 succession of ownership as set forth in this chapter, and the
33 district’s policy for sale or transfer of those rights created pursuant
34 to subdivision (k) of Section 9041.